

**BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

CLARENCE FINNIE)	
Petitioner,)	
)	
v.)	SEAC NO. 08-12-084
)	
WESTVILLE CORRECTIONAL)	
FACILITY,)	
Respondent.)	

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

Respondent WCF, by counsel, filed a Motion to Dismiss on October 15, 2012. Petitioner, by counsel, responded on November 30, 2012. Respondent replied on December 12, 2012. Respondent challenges the jurisdiction of SEAC to hear this matter under Section 42 of the Civil Service System. I.C. 4-15-2.2-42. Respondent specifically advances that the Step III Complaint by Petitioner Finnie was untimely or failed to show administrative exhaustion as required by the Civil Service System because the original Complaint filed at Step I (and Step II) does not allege a public policy violation, and therefore SEAC does not have jurisdiction over the matter. Respondent also asserts that what would be considered Step III, filed at SEAC, is actually a new Complaint because it *does* include a public policy violation issue and therefore the Petitioner skipped Steps I and II as required by Section 42(e) of the Civil Service System.

The Motion presents the question of whether the racial discrimination claim in Petitioner Finnie's otherwise timely Step III Complaint, filed on July 31, 2012 with SEAC, should be deemed a viable relation-back amendment or supplement to the first Step I Complaint filed on June 21, 2012 under the equivalent of Ind. Trial Rule 15. The answer to this question favors the Petitioner in that the Step III Complaint is a viable relation-back amendment or supplement to the Step I Complaint. Additionally and alternatively, the lower step Complaints provided the same nexus of facts and part of the legal theory pled at Step III. I.C. 4-15-2.2-42(a-b) was complied with. Respondent has had fair notice from the commencement of the action of Petitioner's claims. Therefore, the Step III Complaint filed with SEAC on July 31, 2012 was timely filed according to Section 42 of the Civil Service System.

The Motion to Dismiss is entirely **DENIED** as set forth herein. The SEAC has threshold jurisdiction of this case under Section 42 of the Civil Service System and the case shall proceed towards the merits.

I. The Motion to Dismiss Standard

Dismissal proceedings test the legal sufficiency of a complaint. All facts plead in the non-moving party's complaint, and reasonable inferences therefrom, are taken as true. A party's complaint should only be dismissed if it is legally insufficient or fails to plead essential elements of the claim(s). *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007); *Huffman v. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004); *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003); and *Steele v. McDonald's Corp. et al.*, 686 N.E.2d 137 (Ind. Ct. App. 1997). See also, Ind. Trial Rule 12(b)(1) and (6).

II. Complaint Timeliness Under the Civil Service System

Timely administrative exhaustion at each prior step is Petitioner's threshold burden. I.C. 4-15-2.2-42 and I.C. 4-21.5-3. To have Civil Service System standing before SEAC, a petitioner must first timely exhaust Step I with the Appointing Authority (here Respondent WCF) and then timely exhaust Step II with the Indiana State Personnel Department (SPD). Timely exhaustion requires a petitioner to file a written complaint at Step I within thirty (30) days of reasonable discovery of the complained of employment action. If the Appointing Authority denies Step I, the petitioner may proceed to Step II within fifteen (15) days after the date of the denial. If both Steps I and II are denied, the Petitioner may proceed to Step III "within fifteen (15) calendar days after the employee receives notice of the action taken by the [SPD] director or the director's designee." I.C. 4-15-2.2-42(e).

Step III (SEAC) is the final of three steps in the complaint sequence under the Civil Service System, and each step must be timely undertaken before SEAC obtains jurisdiction. The Civil Service System requires dismissal of a SEAC Complaint that does not show such exhaustion. I.C. 4-15-2.2-42(e) ("If a procedural or jurisdictional requirement is not met, the commission [SEAC] shall dismiss the appeal"). See also, *William Reedus v. DWD*, 900 N.E.2d 481, 485-488 (Ind. App. 2009) (the term "shall dismiss" is a mandatory command by the General Assembly.) Here, Petitioner Finnie satisfied these timeliness requirements as discussed below.

III. The Step III Complaint filed July 31, 2012 is timely, and deemed to amend or relate back to the Step I Complaint dated June 21, 2012.

The following jurisdictional and procedural facts are relevant, and construed in favor of non-movant Petitioner Finnie:

1. Petitioner Finnie is understood to be African-American and a member of a protected class. (See, Petitioner's Complaint, July 31, 2012)

2. Petitioner Finnie was terminated from his unclassified, at-will employment as a Training Officer IV on June 15, 2012. (Respondent's Exhibit A)
3. Petitioner, pro se, timely filed a Step I Civil Service Complaint regarding his termination on June 21, 2012. (Resp. Ex. A)
4. The Step I Complaint asserts that Petitioner Finnie was terminated by Respondent WCF for a "failure to report" and that the discipline was "severe" and additionally that Petitioner was not actually working for Respondent WCF at the time of the incident that resulted in his termination, but rather he was working for Aramark Services, an outside contractor for Respondent. (Resp. Ex. A)
5. Petitioner, pro se, timely filed a Step II Civil Service Complaint. (Resp. Motion, p.2 ¶ 5)
6. Petitioner's Step II Complaint was denied on July 17, 2012. Petitioner then retained counsel and timely filed a Step III (SEAC) Complaint on July 31, 2012. (See, Compl.)
7. Petitioner's Step III Complaint, by counsel, filed on July 31, 2012 includes all of the key facts of his Step I-II Complaints with the addition of alleging his termination was due to a public policy violation based on racial discrimination. (Compl., p. 1)
8. The July 31 Complaint specifically alleges that "white employees with similar supervisory authority also failed to report similar incidents, but were not terminated. Instead these white employees were given suspensions" of up to five (5) days. *Id.*
9. In addition, at all three Steps, Petitioner Finney complained of being disciplined by the state while actually working for Aramark Services.
10. In sum, the lower step Complaints provided the same nexus of facts and part of the legal theory in Step III. Respondent has had fair notice from the commencement of the action of Petitioner's claims. The state has not suffered any due process defect contrary to Respondent's brief contentions. The Petitioner's refinement of legal theories at Step III does not create a timeliness issue.

IV. Conclusions of Law & Analysis

The Petitioner's Complaint was timely filed at Step III, and is not an original Step I complaint. Indiana law further recognizes that not all complaint filings are original complaints. Indiana law embraces the notion that once an original complaint is timely filed (here the Step I) that certain later filed complaints are actually amendments that may relate-back to the original complaint. Complaints may also be supplemented when new events arise. Given AOPA's relative silence on the topic, the ALJ looks to both Indiana case law and the Indiana Trial Rules for guidance:

“Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleadings . . .”

Ind. T. R. 15(C)

“Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense.”

Ind. T. R. 15(D)

See further, *M.C. Welding & Machining Co. v. Kotwa*, 845 N.E.2d 188, footnote 4 (Ind. App. 2006)(Where a later-filed retaliatory discharge claim arose out of the same occurrence set forth in the original complaint and therefore the amendment related-back to the date of the original pleading and replaced the original pleading.) *Harp v. Indiana Department of Highways*, 585 N.E.2d, 652, 659 (Ind. App. 1992)(Holding that even a new party may be added by amendment under Ind. T. R. 15(C) if “the claim or defense against the added party arose out of the conduct, transaction, or occurrence set forth in the original pleading . . .,” and (to paraphrase) the responding party had fair notice of the general notice of the claim.) And see, *Porter v. Guzorek*, 857 N.E.2d 363 (Ind. 2006) *reh'g denied* 2007 (The doctrine of relation-back amendments promotes the preference of decision on the merits, but should be balanced with fair notice and finality.)

Indiana Trial Rule 15 permits the amendment of complaints that relate-back to the original pleading. In the instant case, Petitioner Finnie's Step III Complaint, filed on July 31, 2012, arises from the same transaction of events as in his original Step I Complaint. Ind. Trial Rule 15 is a well-established rule allowing amendments to original pleadings. This rule also allows more cases to move forward as "Indiana law strongly prefers disposition of cases on their merits." *Coslett v. Weddle Bros. Constr. Co.*, 798 N.E.2d 859, 861 (Ind. 2003).

The addition of the racial discrimination allegation in the July 31 Complaint is therefore considered an amendment and not a new Complaint under Ind. T.R. 15(C). As long as the responding party "had fair notice of the general notice of the claim" then due process has been satisfied. *Harp* at 659. Here, Respondent WCF had notice as to the issues of the Complaint – the termination and the circumstances surrounding the termination. Respondent had sufficient opportunity to investigate the circumstances following the Step I filing. The addition of a new or refined legal theory – race discrimination – by Petitioner related to the original facts of the termination does not make the Step III Complaint to SEAC a "new" Step I complaint. The amendment arises out of these same issues and therefore relates-back to the original June 21, 2012 Complaint by Petitioner Finnie.

Petitioner's response brief focuses on the additional factor that at all three Steps, Petitioner Finney complained of being disciplined by the state while working for Aramark Services. This pleading gave the state reasonable notice from Step I forward that Petitioner believed he was not being treated consistently with other employees, which supports and ties together the Step III racial discrimination claim. The state had reasonable notice of Petitioner's essential claim, a claim of wrongful termination, and had the opportunity to investigate the general facts and circumstances. Petitioner fully or substantially complied with I.C. 4-15-2.2-42(a-b)(requiring the Step I Complaint to identify the challenged discipline (here termination) and "identify the law, rule or policy that was allegedly violated"). The state has not suffered any due process defect as Respondent's brief contends. The Petitioner's mere refinement of legal theories at Step III does not create a timeliness issue.

IV. Order Denying Motion to Dismiss

Respondent WCF's Motion to Dismiss is entirely **DENIED**. The Step III Complaint was timely, and the addition of the race discrimination claim a permissible, relation-back amendment. The SEAC has threshold jurisdiction of this case under Section 42 of the Civil Service System. The case should proceed towards the merits on Petitioner's Complaint.

DATED: December 17, 2012



Hon. Aaron R. Raff
Chief Administrative Law Judge

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